

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR SENATE BILL 38 AND  
SENATE BILL 249

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING FOR ALTERATION OF A  
BASIC SENTENCE OF IMPRISONMENT WHEN A HATE CRIME IS COMMITTED;  
PROVIDING FOR HATE CRIME DATA COLLECTION AND POLICE TRAINING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Hate Crimes Act".

Section 2. DEFINITIONS.--As used in the Hate Crimes Act:

A. "gender identity" means a person's  
self-perception, or perception of that person by another, of  
the person's identity as a male or female based upon the  
person's appearance, behavior or physical characteristics that  
are in accord or opposed to the person's physical anatomy,  
chromosomal sex or sex at birth;

B. "motivated by hate" means the commission of a

1 crime with the intent to commit the crime because of the actual  
2 or perceived race, religion, color, national origin, ancestry,  
3 gender, sexual orientation or gender identity of the victim,  
4 whether or not the offender's belief or perception was correct;  
5 and

6 C. "sexual orientation" means heterosexuality,  
7 homosexuality or bisexuality, whether actual or perceived.

8 Section 3. HATE CRIMES--NONCAPITAL FELONIES, MISDEMEANORS  
9 OR PETTY MISDEMEANORS COMMITTED BECAUSE OF THE VICTIM S ACTUAL  
10 OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY,  
11 GENDER, SEXUAL ORIENTATION OR GENDER IDENTITY-- ALTERATION OF  
12 BASIC SENTENCE. --

13 A. When a separate finding of fact by the court or  
14 jury shows beyond a reasonable doubt that an offender committed  
15 a noncapital felony motivated by hate, the basic sentence of  
16 imprisonment prescribed for the offense in Section 31-18-15  
17 NMSA 1978 may be increased by one year. An increase in the  
18 basic sentence of imprisonment pursuant to the provisions of  
19 this subsection shall be in addition to an increase in a basic  
20 sentence prescribed for the offense in Section 31-18-17 NMSA  
21 1978. A sentence imposed pursuant to the provisions of this  
22 subsection may include an alternative sentence that requires  
23 community service, treatment, education or any combination  
24 thereof. The court may suspend or defer any or all of the  
25 sentence or grant a conditional discharge, unless otherwise

1 provided by law.

2 B. If a finding was entered in a previous case that  
3 the offender was convicted for committing a crime that was  
4 motivated by hate, and if a separate finding of fact by the  
5 court or jury shows beyond a reasonable doubt that in the  
6 instant case the offender committed a noncapital felony that  
7 was motivated by hate, the basic sentence of imprisonment  
8 prescribed for the offense in Section 31-18-15 NMSA 1978 may be  
9 increased by two years. An increase in the basic sentence of  
10 imprisonment pursuant to the provisions of this subsection  
11 shall be in addition to an increase in a basic sentence  
12 prescribed for the offense in Section 31-18-17 NMSA 1978. A  
13 sentence imposed pursuant to the provisions of this subsection  
14 may include an alternative sentence that requires community  
15 service, treatment, education or any combination thereof. The  
16 court may suspend or defer any or all of the sentence, or grant  
17 a conditional discharge unless otherwise provided by law.

18 C. If the case is tried before a jury and if a  
19 prima facie case has been established showing that in the  
20 commission of the offense the offender was motivated by hate,  
21 the court shall submit the issue to the jury by special  
22 interrogatory. If the case is tried by the court and if a  
23 prima facie case has been established showing that in the  
24 commission of the offense the offender was motivated by hate,  
25 the court shall decide the issue and shall make a separate

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1 finding of fact regarding the issue. If the court or jury  
2 determines that the offender is guilty of the crime and finds  
3 beyond a reasonable doubt that the offender was motivated by  
4 hate, the court shall include that determination in the  
5 judgment and sentence.

6 D. When a petty misdemeanor or a misdemeanor is  
7 motivated by hate, the basic sentence of imprisonment  
8 prescribed for the offense in Section 31-19-1 NMSA 1978 may  
9 include an alternative sentence that requires community  
10 service, treatment, education or any combination thereof. The  
11 court may suspend or defer any or all of the sentence or grant  
12 a conditional discharge, unless otherwise provided by law.

13 Section 4. HATE CRIMES--DATA COLLECTION.--Every district  
14 attorney and every state, county and municipal law enforcement  
15 agency, to the maximum extent possible, shall provide the  
16 federal bureau of investigation with data concerning the  
17 commission of a crime motivated by hate, in accordance with  
18 guidelines established pursuant to the federal Hate Crime  
19 Statistics Act.

20 Section 5. HATE CRIMES--LAW ENFORCEMENT TRAINING.--

21 A. No later than December 31, 2003, the New Mexico  
22 law enforcement academy board shall develop and incorporate  
23 into the basic law enforcement training required, pursuant to  
24 the Law Enforcement Training Act, a course of instruction at  
25 least two hours in length concerning the detection,

1 investigation and reporting of a crime motivated by hate.

2 B. The New Mexico law enforcement academy board  
3 shall develop a course of instruction, learning and performance  
4 objectives and training standards, in conjunction with  
5 appropriate groups and individuals that have an interest in and  
6 expertise regarding crimes motivated by hate. The groups and  
7 individuals shall include law enforcement agencies, law  
8 enforcement academy instructors, experts on crimes motivated by  
9 hate and members of the public.

10 C. In-service law enforcement training, as required  
11 pursuant to Section 29-7-7.1 NMSA 1978, shall include at least  
12 two hours of instruction that conform with the requirements set  
13 forth in Subsection B of this section.

14 D. Each certified regional law enforcement training  
15 facility shall incorporate into its basic law enforcement  
16 training and in-service law enforcement training a course of  
17 training described in Subsection B of this section that is  
18 comparable to or exceeds the standards of the course of  
19 instruction developed by the New Mexico law enforcement academy  
20 board.

21 Section 6. EFFECTIVE DATE. --The effective date of the  
22 provisions of this act is July 1, 2003.

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